AN ORDINANCE RELATING TO **PHOENIX** THE PARK/COURTHOUSE DEVELOPMENT AREA THE "DEVELOPMENT AREA") ESTABLISHED BY ORDINANCE NO. 265-2008 OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (THE "DEVELOPMENT AREA ORDINANCE"): AMENDING THE BOUNDARY OF THE DEVELOPMENT AREA TO ELIMINATE ANY **OVERLAP** WITH THE 21C DEVELOPMENT AREA: APPROVING AN AMENDED AND RESTATED LOCAL PARTICIPATION APPLICABLE TO THE DEVELOPMENT AREA; APPROVING AN AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT RELATING TO THE CENTREPOINTE PROJECT UNDER CONSTRUCTION THE DEVELOPMENT AREA; AUTHORIZING THE DEPARTMENT OF FINANCE, AS THE AGENCY DESIGNATED FOR THE DEVELOPMENT AREA IN THE DEVELOPMENT AREA ORDINANCE TO APPLY FOR AN AMENDMENT OF THE TAX INCENTIVE AGREEMENT APPLICABLE TO THE DEVELOPMENT AREA: AUTHORIZING THE MAYOR AND OTHER STAFF OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT TO **EXECUTE AND ALL DOCUMENTS IN ACCORDANCE HEREWITH** FOR THE DEVELOPMENT OF THE DEVELOPMENT AREA CONSISTENT WITH THE AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT, THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND INCENTIVE AGREEMENT APPLICABLE TO THE DEVELOPMENT AREA.

WHEREAS, the Lexington-Fayette Urban County Government, Commonwealth of Kentucky ("LFUCG") pursuant to KRS 65.7041 to 65.7083 (the "Act"), through the adoption of the Development Area Ordinance, established the Phoenix Park/Courthouse Development Area (the "Development Area"), and approved the execution of a Local Participation Agreement relating to the Development Area as provided in the Act; and

WHEREAS, subsequent to the adoption of the Development Area Ordinance, the Department of Finance (the "Agency") for LFUCG, as the Agency designated in the Development Area Ordinance, applied for a received a pledge of State incremental tax revenues for projects within the Development Area as a "signature project" under the Act, with the pledge of State incremental tax revenues being committed through the execution of a tax incentive agreement between KEDFA, as hereinafter defined, and the Agency, dated September 24, 2009 (the "Tax Incentive Agreement), which has subsequently amended as the Second Amended and Restated Tax Incentive Agreement, dated December 12, 2013; and

WHEREAS, LFUCG and the Agency entered into a Master Development Agreement dated August 1, 2013; with the Developer, as hereafter defined, related to the construction of the CentrePointe Project, as hereinafter defined; and there is a need to amend the Master Development Agreement through the execution of an Amended and Restated Master Development Agreement, hereinafter defined, and attached as Exhibit C.

WHEREAS, subsequent to execution of the Local Participation Agreement and the Tax Incentive Agreement, including any amendments thereto, there have been changes in the anticipated development projects within the Development Area, including how the LFUCG and State incremental tax revenues shall be used within the Development Area, including how the planned projects within the Development Area shall be financed, which requires the approval and execution of an Amended and Restated Local Participation Agreement, and an additional amendment to the Tax Incentive Agreement; and

WHEREAS, the LFUCG deems it necessary to enact this Ordinance in accordance with the Act and for the purposes set forth and described herein and in the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AS FOLLOWS:

SECTION 1. <u>Definitions</u>.

"Amended and Restated Local Participation Agreement" shall mean the Amended and Restated Local Participation Agreement between the LFUCG and the Agency, attached as Exhibit "B".

"Amended and Restated Master Development Agreement" shall mean the Amended and Restated Master Development Agreement relating to the CentrePointe Project, among the LFUCG, the Agency and the Developer, attached as Exhibit C.

"CentrePointe Project" means a mixed-use development to be constructed by the developer, CentrePointe Parking Company, LLC, as more specifically described in the Amended and Restated Master Development Agreement.

"Development Area" means the contiguous geographic area of previously developed land, located within the geographical boundaries of the LFUCG, which has been created for economic development purposes as more specifically described in Exhibit A attached hereto, to be known as the "Phoenix Park/Courthouse Development Area".

"Financing Costs" shall mean principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of Bonds, for Approved Public Infrastructure Costs or Approved Signature Project Costs as defined and set forth

in the Amended and Restated Local Participation Agreement, provided, however, that any bonds that may be issued shall not be subject to a pledge of the full faith and credit of LFUCG, or be guaranteed by LFUCG.

"Incremental Revenues" means the amount of revenues received by the LFUCG with respect to the Development Area and the State with respect to the Footprint (as defined in the Act) as defined and set forth in the Amended and Restated Local Participation Agreement and Tax Incentive Agreement.

"KEDFA" means the Kentucky Economic Development Finance Authority.

"Project" shall mean the proposed comprehensive redevelopment project within the Development Area more specifically described in the Development Area Ordinance and the Amended and Restated Local Participation Agreement.

"Signature Project Program" shall mean the State participation program described in the Act.

"State" means the Commonwealth of Kentucky.

"Tax Incentive Agreement" shall mean the agreement entered into pursuant to KRS 154.30-010 to KRS 154.30-090 and KRS 139.515 of the Act between the Kentucky Economic Development Finance Authority and the Agency, relating to the Development Area, including any amendments thereto.

1.2 All capitalized terms used herein and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

SECTION 2. <u>Development Area Ordinance</u>. To the extent the Development Area Ordinance approved a financing plan and definitions that conflict or differ from the provisions of this Ordinance and the Amended and Restated Local Participation Agreement, the provisions of this Ordinance and the Amended and Restated Local Participation Agreement shall apply and take precedence over the conflicting provisions of the Development Area Ordinance.

SECTION 3. <u>Establishment, Name, Boundaries.</u> That the boundary of the Development Area previously established by the Development Area Ordinance is hereby amended to reflect the map and description attached as Exhibit "A"; and which Development Area shall be named the "Phoenix Park/Courthouse Development Area."

SECTION 4. Amended and Restated Local Participation Agreement. The Mayor of the LFUCG and Commissioner of the Department of Finance are hereby authorized and directed to execute, acknowledge and deliver on behalf of the LFUCG and the Agency, respectively, the Amended and Restated Local Participation Agreement, a form of which is attached as Exhibit B and made a part hereof, between the LFUCG and the Agency, authorizing the pledge of a portion of the Incremental Revenues of the LFUCG from the Development Area to the payment of Redevelopment Assistance, Approved

Public Infrastructure Costs, Financing Costs and/or Approved Signature Project Costs. The form of Amended and Restated Local Participation Agreement to be signed by the Mayor on behalf of the LFUCG and by the Commissioner of the Department of Finance, on behalf of the Agency, shall be in substantially the form attached hereto, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the LFUCG. The approval of such changes by said officers, and that such changes are not substantially adverse to the LFUCG, shall be conclusively evidenced by the execution of such Amended and Restated Local Participation Agreement by such officials.

SECTION 5. Amended and Restated Master Development Agreement. The Mayor of the LFUCG and Commissioner of the Department of Finance are hereby authorized and directed to execute, acknowledge and deliver on behalf of the LFUCG and the Agency, respectively, the Amended and Restated Master Development Agreement, a form of which is attached as Exhibit C and made a part hereof, between the LFUCG, the Agency, and the Developer, relating to the construction of the CentrePointe Project. The form of Amended and Restated Master Development Agreement to be signed by the Mayor on behalf of the LFUCG and by the Commissioner of the Department of Finance, on behalf of the Agency, shall be in substantially the form attached hereto, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the LFUCG. The approval of such changes by said officers, and that such changes are not substantially adverse to the LFUCG, shall be conclusively evidenced by the execution of such Amended and Master Development Agreement by such officials.

SECTION 6. <u>Authorization of Application to KEDFA</u>. The Mayor and other officials of the LFUCG are hereby further authorized and directed to execute, acknowledge and deliver on behalf of the LFUCG one or more applications to KEDFA and related offices of the State to amend the Tax Incentive Agreement in accordance with the provisions of this Ordinance, the Amended and Restated Local Participation Agreement and the Amended and Restated Master Development Agreement.

SECTION 7. <u>Authorization of LFUCG Officials</u>. The Mayor and other appropriate LFUCG officials, officers, employees and agents are hereby authorized to take all necessary actions to submit the necessary application and other documents to KEDFA and any other necessary entities to obtain the necessary approvals and to take all necessary actions as required by the KEDFA and other entities to meet all of the requirements of and qualify to participate in the Signature Project Program as set forth in the Act, and to carry out the intent of this Ordinance.

SECTION 8. <u>Severability.</u> The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION 9. Repeal of Conflicting Orders and Ordinances. All prior resolutions, municipal orders or ordinances or parts of any resolution, municipal order or ordinance in conflict herewith are hereby repealed.

SECTION 10. <u>Effective Date</u>. This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

GIVEN SECOND READING AND ADOPTED AT A DULY CONVENED MEETING OF THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, LEXINGTON, KENTUCKY, held on the \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2014 and on the same occasion signed by the Mayor as evidence of his approval, attested by the Clerk of Council, published and filed as required by law, and declared to be in full force and effect from and after its adoption and approval according to law.

Approved:

By:\_\_\_\_\_\_

Mayor

ATTEST:

# EXHIBIT A DEVELOPMENT AREA DESCRIPTION AND MAP

## EXHIBIT B AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT

## AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT

**FOR** 

#### PHOENIX PARK/COURTHOUSE DEVELOPMENT AREA

BY AND BETWEEN

#### LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

A Kentucky Urban County Government

AND

#### DEPARTMENT OF FINANCE FOR

#### THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

September 15, 2014

Exhibit A - The Development Area

Exhibit B - The Project

Exhibit C - Other Elements of the Project to be supported with Incremental Revenues

Exhibit D - Listing of Anticipated Incremental Revenues from Development Area

Exhibit E - Listing of Old Revenues Collected by the LFUCG from the Development Area

Exhibit F - Amended and Restated Master Development Agreement

#### **INDEX**

TO

## AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT DATED

#### September 15, 2014

#### LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

#### AND

#### DEPARTMENT OF FINANCE AND ADMINISTRATION FORTHE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

SUBJECT	PAGI
Recitals	
Statement of Agreement	
SECTION I Preambles	4
SECTION II Definitions	4
SECTION III Parties	
SECTION IV Duties and Responsibilities of LFUCG	8
SECTION V Duties and Responsibilities of the Agency	10
SECTION VI Identification and Pledge of Incremental Revenues	
SECTION VII Anticipated Benefits to the LFUCG	
SECTION VIII Description of Development Area	13
SECTION IX Description of Project; Costs	13
SECTION X Financing Plan	14
SECTION XI Commencement Date; Activation Date; Termination Date	15
SECTION XII Default	15
SECTION XIII Governing Law	16
SECTION XIV Severability	16
SECTION XV Force Majeure	16
SECTION XVI Notices	17
SECTION XVII Approvals	18
SECTION XVIII Entirety of Agreement	18
SECTION XIX Successors and Assigns	19
SECTION XX Headings and Index	19
SECTION XXI Exhibits	. 19
SECTION XXII No Waiver	10
SECTION XXIII Construction	20
SECTION XXIV Multiple Counterparts	20
SECTION XXV Relationship of the Parties	20
SECTION XXVI No Third Party Beneficiary	20
SECTION XXVII Diligent Performance	21
SECTION XXVIII Assignment of Rights and Delegation of Duties	21

#### AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT

THIS AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT (this "Agreement") is made as of the 15<sup>th</sup> day of September, 2014 (the "Effective Date", except that the Commencement Date for the Development Area, as hereinafter defined, shall be December 1, 2008, the date of the original Local Participation Agreement) by and among the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a Kentucky urban county government (the "LFUCG"), and the DEPARTMENT OF FINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the "Agency"), collectively (the "Parties");

#### **RECITALS**

Whereas, pursuant to the Act, as hereinafter defined, LFUCG by Ordinance No. 265-2008 (the Development Area Ordinance"), adopted on December 4, 2008, established Phoenix Park/Courthouse Development Area (the "Development Area") and pledged certain LFUCG Incremental Revenues, through the execution of a local participation agreement as provided in the Act, dated December, 1, 2008 (the "Local Participation Agreement") to pay for project costs and redevelopment assistance within the Development Area as more specifically identified within the Local Participation Agreement, and

WHEREAS, subsequent to the execution of the Local Participation Agreement, LFUCG, the Authority, and the Developer, as hereinafter defined, executed a Master Development Agreement relating to the CentrePointe Project, to be constructed within the Development Area, and which pledged certain funds to reimburse the Developer for capital costs associated with a the construction of a public parking garage as part of the CentrePointe Project. The Master Development Agreement has been amended by an Amended and Restated Master Development Agreement, dated September 15, 2014, and attached as Exhibit "F"; and

WHEREAS, pursuant to the Act the LFUCG has on the \_\_\_\_ day of \_\_\_\_\_\_, 2014, adopted Ordinance Number \_\_\_\_\_\_-2014, (the "Ordinance"), whereby it amended certain documents, including this Agreement, the Amended and Restated Master Development Agreement, and other matters relating to the Development Area, which was established for the purpose of the redevelopment of the Development Area; and

WHEREAS, the LFUCG recognizes and determines that the real property that constitutes the Development Area has been and is presently characterized by vacant parcels and deteriorated structures, that continuation of the physical deterioration within the Development Area will discourage and interfere with the LFUCG's growth and the improvement of areas surrounding the Development Area, and that the acquisition, financing, construction and development of those improvements and buildings, as identified in Exhibit B herein (collectively, the "Project"), will contribute to the public welfare of the citizens of the LFUCG and the Commonwealth of Kentucky (the "State") and will thereby materially enhance the area and be in furtherance of the general health and welfare of the citizens of the LFUCG and the State; and

WHEREAS, the Parties recognize that the redevelopment of the Development Area, will not occur without a public-private partnership and financial assistance provided to the Project by the LFUCG and the State; and

WHEREAS, the Parties desire to set forth the duties and responsibilities of the Parties with respect to the administration, financing and pledging of Incremental Revenues in support of the development of the Project within the Development Area; and

WHEREAS, pursuant to the Ordinance, the Council of the LFUCG has authorized the Mayor to execute and enter into this Agreement with the Agency and the LFUCG desires to enter into this Agreement; and

WHEREAS, pursuant to the Ordinance, the Council of the LFUCG has authorized the Commissioner of Finance to execute and enter into this Agreement with the LFUCG and the Agency desires to enter into this Agreement; and

WHEREAS, pursuant to the Act (as hereinafter defined), the LFUCG and the Agency desire to set forth their mutual agreements, understandings and obligations in this Agreement, in order to facilitate development of the Project within the Development Area.

#### **STATEMENT OF AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and in consideration of the premises and the mutual covenants and undertakings contained herein, it is agreed and covenanted by and among the Parties hereto as follows:

#### SECTION I Preambles

The Parties hereto agree that the above "preambles" or "preamble clauses" are incorporated herein by reference as if fully restated herein and form a part of the agreement among the Parties hereto.

### SECTION II Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

- 1. "Act" or "the Act". Shall mean KRS 65.7041 to KRS 65.7083, KRS 154.30-010-154.30-090 and KRS 139.515.
- 2. "Administrative Costs". Those costs set forth in Amended and Restated Master Development Agreement at Section V(A) and V(B) to be retained by Agency before reimbursing the Developer for any costs relating to the Parking Structure.
- 3. "Agency". Shall mean the Department of Finance of the Lexington-Fayette Urban County Government.
- 4. "<u>Agreement</u>". Shall mean this Amended and Restated Local Participation Agreement, including all Exhibits attached hereto.

- 5. "Approved Public Infrastructure Costs". Shall be the capital investment as defined in the Act relating to the Parking Structure, and approved by KEDFA in the Tax Incentive Agreement, as it may be amended..
- 6. "Approved Signature Project Costs". Shall be the signature project costs defined in the Act relating to the Parking Structure and approved by KEDFA in the Tax Incentive Agreement, as it may be amended.
- 7. "Bonds". Shall mean any bonds, including, but not limited to increment bonds, notes, or other forms of Private Financing to finance projects within the Development Area, in accordance with the Financing Plan.
- 8. "Bond Documents". Shall mean all of the documents constituting the bond transcript of proceedings in connection with the Bonds.
- 9. "<u>Developer" or "Master Developer</u>". Shall mean Centrepointe Parking Company, LLC.
- 10. "Development Area". Shall have the meaning given in the Recitals to this Agreement.
- 11. "<u>Effective Date</u>". Shall have the meaning given in the introductory paragraph of this Agreement.
- 12. "Excess Incremental Revenues". Means Incremental Revenues in excess of the amounts required to support the payment of Bonds and to meet any coverage tests set forth in the Bond Documents.
  - 13. "Financing Costs". Shall have the meaning as provided in the Act.

- 14. "<u>Financing Plan</u>". Shall mean the plan for financing the Project as described in Section X of this Agreement, as it may be amended with the approval of the of the LFUCG and the State.
- 15. "Incremental Revenues". Shall have the meaning as provided in the Act, except that Incremental Revenues shall not include any portion of the real property ad valorem tax rate of the LFUCG designated for the Transit Authority of the Lexington-Fayette Urban County Government or the Lexington Public Library District.
  - 16. "KEDFA". Shall mean the Kentucky Economic Development Finance Authority.
- 17. "<u>LFUCG</u>". Shall mean the Lexington-Fayette Urban County Government, a Kentucky urban county government organized under the provisions of Chapter 67A of the Kentucky Revised Statutes.
- 18. "LFUCG Authorizations". Shall mean those necessary governmental authorizations, resolutions, orders, hearings, notices, ordinances, and other acts, required by laws, rules, or regulations to provide the LFUCG and its officers with the proper authority to perform all obligations of the LFUCG resulting from this Agreement, and perform all other obligations of the LFUCG made necessary by, or resulting from the establishment of the Development Area.
  - 19. "New Revenues". Shall have the meaning as provided in the Act.
  - 20. "Old Revenues". Shall have the meaning as provided in the Act.

- 22. "<u>Parking Structure</u>". Shall mean the 3-story underground parking garage to be constructed on the project site for the CentrePointe Project.
- 23. "Private Financing". Shall mean the financing needed to provide for the development and construction of the Project elements or any financing received by the Developer that is not from LFUCG or the State.
- 24. "<u>Project</u>". Shall mean the comprehensive development described in Exhibit B, attached hereto, within the Development Area, more specifically described in Exhibit A, attached hereto.
- 25. "Redevelopment Assistance". Shall have the same meaning as provided in the Act.
- 26. "Special Fund". Shall mean the Phoenix Park/Courthouse Development Area Special Fund established in the Amended Development Area Ordinance for the purpose of holding the LFUCG's Incremental Revenues pledged herein in connection with the development of the Project.
- 27. "State". Shall mean the Commonwealth of Kentucky, including any of its agencies and departments.
- 28. "<u>Tax Incentive Agreement</u>". Shall mean the Tax Incentive Agreement, as it may be amended, between KEDFA and the Agency relating to a pledge of state tax revenues to pay for Approved Public Infrastructure Costs, Approved Signature Project Costs and Financing Costs for Approved Public Infrastructure Costs.
- 29. "<u>Unavoidable Delays</u>". Shall mean delays due to labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, governmental regulations not in effect at the date of

execution of this Agreement, conditions that could not have been reasonably foreseen by the claiming party, inability to obtain construction materials or energy, fire, or unavoidable casualty, provided such matters are beyond the reasonable control of the party claiming such delay.

### SECTION III Parties

The parties to this Agreement shall be the LFUCG and the Agency.

### SECTION IV Duties and Responsibilities of LFUCG

The LFUCG shall have the following duties and responsibilities in connection with the development of the Development Area:

- 1. Provide for the establishment of the LFUCG Special Fund for the collection of Incremental Revenues pledged herein from LFUCG real property *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes), within the Development Area from the Project, which Special Fund is established in the Amended Development Area Ordinance.
- 2. Pledge eighty percent (80%) of the LFUCG's Incremental Revenues from LFUCG real property ad valorem taxes and occupational taxes (consisting of business occupational taxes and payroll taxes), generated within the Development Area for up to a thirty (30) year period to pay for Administrative Costs, to support the payment of the Bonds issued to pay for Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs for the Approved Public Infrastructure Costs, or to reimburse Developer for such costs that are not paid for by the Bonds (provided that the total payment from Incremental Revenues and from State tax revenues reimbursed pursuant to the Tax Incentive Agreement for Approved

Public Infrastructure Costs, Approved Signature Project Costs and Financing Costs for the Approved Public Infrastructure Costs shall be capped at \$51,000,000), and after those costs are paid, to pay for other Project costs and Redevelopment Assistance as determined by LFUCG related to the Development Area from the list of projects attached as Exhibit "C".

- 4. Make, in participation with the Agency and the Developer, application to the KEDFA to amend the Tax Incentive Agreement to request State participation as provided in the Amended and Restated Master Development Agreement, this Agreement and as provided in the Financing Plan.
- 5. Designate the Agency as the entity responsible for the oversight, administration, and implementation of the Amended Development Area Ordinance.
- 6. Meet at least quarterly with the Developer and the Agency for the purpose of reviewing the progress of the development of the Development Area and prepare an analysis of such progress for distribution to the Agency and the State in accordance with the Act.
- 7. Require its Department of Finance as the "agency" for purposes of the Act, to prepare by no later than June 1 of each year during the term of this Agreement an annual report and provide same to the LFUCG and KEDFA including, but not limited to: (a) the total real property ad valorem taxes, business occupational license taxes and business employee payroll taxes collected within the Development Area during the previous calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; (c) a summary of debt service paid on outstanding Bonds during the previous calendar year; (d) the amount, if any, of Bonds issued during the previous calendar year, and (e) if no Bonds are issued, the amount, if any, of Incremental Revenues spent from the Special Fund

on Approved Public Infrastructure Costs, Signature Project Costs, Redevelopment Assistance and/or Financing Costs in connection with the Project.

8. Enter any agreements or interlocal agreements that may be required to enable the Kentucky Bond Development Corporation to act as the conduit issuer for the tax exempt bonds for the Parking Structure; and request the Kentucky Bond Development Corporation to act as the conduit issuer of the tax exempt bonds for the Parking Structure supported by the Incremental Revenues as set forth herein, provided any such bonds shall not be subject to a pledge of the full faith and credit of LFUCG, or be guaranteed by LFUCG.

### SECTION V Duties and Responsibilities of the Agency

The Agency shall have the following duties and responsibilities in connection with the development of the Development Area:

- 1. Act as the entity responsible for the oversight, administration, and implementation of the Amended Development Area Ordinance.
- 2. Participate with the LFUCG and Developer in the application to KEDFA, requesting an amendment to the Tax Incentive Agreement as provided in this Agreement, and as provided in the Financing Plan.
- 3. Meet at least quarterly with the Developer and the LFUCG for the purpose of reviewing the progress of the development of the Development Area and prepare an analysis of such progress for distribution to the Agency and the State in accordance with the Act.
- 4. Prepare by no later than June 1 of each year during the term of this Agreement an annual report and provide same to the LFUCG and KEDFA including, but not limited to: (a) the total real property *ad valorem* taxes, business occupational license taxes and business employee

payroll taxes collected within the Development Area during the previous calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; (c) a summary of debt service paid on outstanding Bonds during the previous calendar year; (d) the amount, if any, of Bonds issued during the previous calendar year, and (e) if no Bonds are issued, the amount, if any, of Incremental Revenues spent from the Special Fund on Approved Public Infrastructure Costs, Signature Project Costs, Redevelopment Assistance, and/or Financing Costs in connection with the Project.

5. Enter any agreements or interlocal agreements, or other documents that may be required to enable the Kentucky Bond Development Corporation to act as the conduit issuer for the tax exempt bonds for the Parking Structure.

### SECTION VI Identification and Pledge of Incremental Revenues

1. The LFUCG hereby pledges eighty percent (80%) of the LFUCG's Incremental Revenues, from LFUCG real property ad valorem taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) generated within the Development Area from the Project to first pay for Administrative Costs and then to support the payment of the Bonds issued to pay for, Approved Public Infrastructure Costs, Approved Signature Project Costs and Financing Costs related to the Approved Public Infrastructure Costs as provided in the approved Financing Plan, or to reimburse Developer for such costs not paid for by the Bonds, or to pay for such costs directly as Incremental Revenues are generated in the event that Bonds are not issued (but not to exceed \$51,000,000 from Incremental Revenues and state tax revenues pursuant to the Tax Incentive Agreement), and after those costs are paid from Excess Incremental Revenues, to pay for other Project costs and Redevelopment Assistance as determined by LFUCG related to

the Development Area, for up to a thirty (30) year period Provided, however, no Incremental Revenues for Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs for the Approved Public Infrastructure Costs shall be released by the Agency until the Minimum Capital Investment as set forth in the Tax Incentive Agreement has been achieved by the Developer and certified by KEDFA. The Incremental Revenues shall be determined by calculating the New Revenues collected from the Development Area, and subtracting the Old Revenues collected from within the Development Area for the base year, which is the calendar year 2008. A listing of the Old Revenues collected by the LFUCG from within the Development Area is attached hereto on Exhibit E.

2. Incremental Revenues pledged by the LFUCG in this Section shall be deposited annually, no later than each June 1<sup>st</sup> after the first calendar year of activation, to the Special Fund and used solely for payment of the costs set forth in Section VI(1) of this Agreement and for no other purpose. Such Special Fund shall be continued and maintained until the Termination Date as defined in the Development Area Ordinance of the Development Area. Amounts in the Special Fund, together with interest accruing thereon, are hereby irrevocably pledged for the payment of the costs set forth in Section VI(1) of this Agreement If Bonds are issued, this Agreement may be pledged and assigned by the Agency and the Developer or other issuer to a Trustee under a certain Trust Indenture for the Bonds, by and between the Developer, or other issuer, and the Trustee, as it may be amended or restated from time to time, and made a part of the trust estate established thereunder for the security of the Bonds as more particularly set forth therein.

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3. At the Termination Date (as defined in the Development Area Ordinance) all amounts remaining in the Special Fund shall be transferred to the General Fund of the LFUCG.

### SECTION VII Anticipated Benefits to the LFUCG

The LFUCG anticipates receiving substantial benefits as a result of the pledge of their Incremental Revenues to support development of the Development Area as set forth herein. Detailed summaries of Old Revenues and projected New Revenues for the LFUCG on an annual basis during the term of this Agreement are attached as Exhibits D and E hereto. The maximum amount of Incremental Revenues to be paid by the LFUCG shall be eighty percent (80%) of the Incremental Revenues generated from the Development Area, and the maximum number of years the payment of Incremental Revenues to support the development of the Development Area will be made is 30 years.

### SECTION VIII Description of Development Area

A detailed description of the Development Area is set forth in Exhibit A hereto.

### SECTION IX Description of Project; Costs

A detailed description of the individual projects that collectively constitute the Project is set forth in Exhibit B hereto. Also included in Exhibit B is an estimate of the costs of construction, acquisition and development of such proposed projects. The elements of the Project planned to be supported or paid for with Incremental Revenues include the payment of Administrative Costs, Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs for Approved Public Infrastructure Costs, and after those costs are paid, the

costs for those projects listed on the attached Exhibit C, subject to amendment approved by the LFUCG.

#### SECTION X Financing Plan

Land acquisition, capital construction, and financing costs for the Parking Structure will be financed using Incremental Revenues through a combination of Private Financing and proceeds from the issuance of tax-exempt Bonds using the Kentucky Bond Development Corporation as a conduit. The private components of the Project will be financed through Private Financing. The cost for the other projects set forth in Exhibit C will be financed in a structure to be determined by the LFUCG (collectively, the "Financing Plan"). It is understood that the Financing Plan for the Project may be modified as development of the Project progresses and that more specific details of the nature of each aspect of financing the Project shall be more particularly contained in the Bond Documents and other documents at the time that each aspect of the financing needed for the Project is obtained. However, the pledge of Incremental Revenues herein to support payment of the Bonds issued for the Project or to directly support construction of the Project shall not be modified without the specific approval of the LFUCG and State.

IT IS UNDERSTOOD BY THE PARTIES THAT ANY NOTES OR BONDS
ISSUED FOR THE BENEFIT OF ELIGIBLE ELEMENTS OF THE PROJECT AND
SECURED BY INCREMENTAL REVENUES SHALL NOT CONSTITUTE A DEBT OF
THE LFUCG, THE AGENCY OR THE STATE OR A PLEDGE OF THE FULL FAITH
AND CREDIT OF THE LFUCG, THE AGENCY OR THE STATE AND THE LFUCG,
THE AGENCY AND THE STATE SHALL HAVE NO OBLIGATION, WHATSOEVER,

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## TOWARD THE PAYMENT OF SUCH BONDS BEYOND THE PLEDGE OF INCREMENTAL REVENUES AS PROVIDED FOR IN THIS AGREEMENT.

### SECTION XI Commencement Date; Activation Date; Termination Date

This Agreement shall commence and be effective as of the date of execution hereof by the LFUCG. The activation date for the pledge of Incremental Revenues as set forth in Section VI hereof shall be January 1, 2013. This Agreement shall terminate 30 years after the activation date as set forth above. This Agreement shall not terminate upon the execution of any deeds or other agreements required or contemplated by this Agreement, or referred to herein, and the provisions of this Agreement shall not be deemed to be merged into the deeds, or any other such deeds or other agreements, it being the intent of the parties hereto that this Agreement shall survive the execution and delivery of any such agreements.

### SECTION XII Default

If the LFUCG (a "Defaulting Party") shall default in its obligation to make payments of Incremental Revenues set forth herein or in the Bond Documents, the Agency (unless it is the Defaulting Party) and/or the indenture trustee or trustees for outstanding Bonds secured by such Incremental Revenues shall have the power to enforce the provisions of this Agreement and the Bond Documents against the Defaulting Party. If the LFUCG materially breaches or defaults on any of its non-payment related obligations under this Agreement, any other party and/or the indenture trustee or trustees for the outstanding Bonds may give notice that remedial action must be taken within thirty (30) days. The Defaulting Party shall correct such breach or default within thirty (30) days after such notice, provided however that if (i) the default is one which cannot

with due diligence be remedied by the Defaulting Party within thirty (30) days and (ii) the Defaulting Party proceeds as promptly as reasonably possible after such notice and with all due diligence to remedy such default, the period after such notice within which to remedy the default shall be extended for such period of time as may be necessary to remedy the same with all due diligence.

#### SECTION XIII Governing Law

The laws of the State shall govern as to the interpretation, validity and effect of this Agreement.

### SECTION XIV Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties essential objectives as expressed herein.

#### SECTION XV Force Majeure

The LFUCG shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the

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commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay. Thereafter, the non-performing party shall, from time to time, on written request of the other party, keep the other party fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default. All provisions of any construction schedule shall be adjusted in accordance with such Unavoidable Delay.

#### SECTION XVI Notices

Any notice to be given under this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earliest of (i) three (3) days following deposit in the U.S. Mail with proper postage prepaid, Certified or Registered, (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) receipt of notice given by telecopy or personal delivery:

If to the LFUCG:

Mayor Jim Gray

200 East Main Street

Lexington, Kentucky 40507

With a Copy to:

Commissioner of Law Janet M. Graham

200 East Main Street

Lexington, Kentucky 40507

With additional copy to:

Kevin Atkins

Chief Development Officer

200 East Main Street

Lexington, Kentucky 40507

If to the Agency:

Commissioner of Finance William O'Mara

200 East Main Street

Lexington, Kentucky 40507

### SECTION XVII Approvals

Whenever a party to this Agreement is required to consent to, or approve, an action by the other party, or to approve any such action to be taken by another party, unless the context clearly specifies a contrary intention, or a specific time limitation, such approval or consent shall be given within thirty (30) business days and shall not be unreasonably withheld or delayed by the party from whom such approval or consent is required.

### SECTION XVIII Entirety of Agreement

As used herein, the term "Agreement" shall mean this Agreement and the Exhibits attached hereto. This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements, and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party which has not been embodied in this Agreement, and no party shall be bound by or be liable for any

alleged representation, promise, inducement, or statement of intention not so set forth. This

Agreement may be amended, modified, superseded, or cancelled only by a written instrument
signed by all of the parties hereto, and any of the terms, provisions, and conditions hereof may be
waived only by a written instrument signed by the waiving party. Failure of any party at any
time or times to require performance of any provision hereof shall not be considered to be a
waiver of any succeeding breach of any such provision by any part.

### SECTION XIX Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

#### SECTION XX Headings and Index

The headings in this Agreement and the Index are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.

### SECTION XXI Exhibits

All exhibits to this Agreement shall be deemed to be incorporated herein by reference and made a part hereof, above the signatures of the parties hereto, as if set out in full herein.

### SECTION XXII No Waiver

No waiver of any condition or covenant of this Agreement to be satisfied or performed by the LFUCG shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of either party,

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except a written waiver signed by such party, shall be construed to be a waiver of any condition or covenant to be performed by the other party.

### SECTION XXIII Construction

No provisions of this Agreement shall be construed against a party by reason of such party having drafted such provisions.

#### SECTION XXIV Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall constitute an original document.

#### SECTION XXV Relationship of the Parties

Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association among any of the Parties of this Agreement.

### SECTION XXVI No Third Party Beneficiary

Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the LFUCG and the Agency and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

### SECTION XXVII Diligent Performance

With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of the performance thereof. Notwithstanding the above, time is of the essence with respect to any time limit specified herein.

### SECTION XXVIII Assignment of Rights and Delegation of Duties

No Party to this Agreement may assign this Agreement, or any part hereof without the prior written consent of the other Parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

Approval as to Form:
anet M. Graham
Commissioner of Law for the
Lexington-Fayette Urban County Government

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William O'Mara Commissioner of Finance

#### **EXHIBITS**

Exhibit A: Development Area Map and Description

Exhibit B: The Project

Exhibit C: Other Elements of Project to be Financed with Incremental Revenues

Exhibit D: Listing of Anticipated Incremental Revenues from Development Area

Exhibit E: Listing of Old Revenues Collected by the LFUCG from the Development Area

Exhibit F: Amended and Restated Master Development Agreement

LFUCG Ordinance Approving LPA

#### **EXHIBIT B**

### PHOENIX PARK/COURTHOUSE TAX INCREMENT FINANCING AMENDED AND RESTATED PROJECT DESCRIPTION

The Phoenix Park/Courthouse Project is a 14.25 acre project in Downtown Lexington that will leverage the construction and private development of CentrePointe, a mixed use development consisting of hotel, commercial office, retail and residential apartment and condominium uses.

The project shall substantially consist of the following structures:

- Two full-service hotels with a combined 315 rooms
- 16 condominiums
- 75 apartments with 10,700 square feet of ground floor retail space
- Office building with 150,094 square feet of Class A office space as well as restaurant and retail space
- Two-story retail building with a roof top café/bar
- Three-story underground Parking Garage with approximately 700 parking spaces (which is considered to be public infrastructure)
- Streetscape and 5/3 Pavilion Improvements
- Old Courthouse Improvements
- Courthouse Plaza Improvements
- Phoenix Park Enhancements
- Land acquisition for 5/3 Pavilion

#### **EXHIBIT C**

#### PHOENIX PARK/COURTHOUSE

### OTHER ELEMENTS WITHIN DEVELOPMENT AREA TO BE SUPPORTED BY INCREMENTAL REVENUES

Streetscape and 5/3 Pavilion Improvements:	\$ 6,550,000
Old Courthouse Improvements	\$16,000,000
Courthouse Plaza Improvements	\$ 2,000,000
Phoenix Park Enhancements	\$ 4,000,000
Land acquisition for 5/3 Pavilion:	\$ 1,125,000

Total:

\$29,675,000

		Incremen	CentrePointe Incremental Tax Revenues Generated for Project	CentrePointe levenues Gene	rated for P	roject					
		Total	2016	2017	2018	2019	2020	2025	3025	3045	30 V
Estimated Tax Revenues from Project							2020	2202	2033	2002	50-Year Lotal
State Tax Revenues											
State Property Tax Revenues		\$7,711,290	\$190.083	\$193.884	£107763	\$300 717	6306 3EA		2		
State Sales and Use Tax Revenues		\$56 593 RR2	\$1 205 388	&1 253 123	20107	401/11	20,000	001'/77¢	C16'0/7E	\$33/,55/	\$7,711,290
State Individual Income Tax		844 377 518	\$1,073,570	\$1 108 CT	001,255,16	95,000,000	\$1,516,766 \$1,6/5,8/4 \$2,042,881	\$1,0/5,6/4	\$2,042,881	\$2,490,260	\$56,593,882
Total State Tax Revenues		069 C89 8015	2,0,0,0,0	080 V37 CB		6/4/101/14	\$1,184,617 \$1,308,25Z \$1,594,75Z	\$1,308,252	\$1,594,752	\$1,943,994	\$44,377,518
Local Tax Revenues			44,000,000	600/ECO/24	\$2,770,30%	CCC,640,24	CCC//06/74	33,211,292	,211,292 \$3,914,547	\$4,7771,811	\$108,682,690
Local Property Tax Revenues		\$12.881.647	\$317.532	STOP RED	03E 0EE	4336 DC4	3	3	}		
Local Occupational License Tax		\$23,773,670	\$575.128	\$503,610	\$600 131	**************************************	\$694,700	004,400	3407,294	\$563,887	\$12,881,647
Total Local Tax Revenues	.	\$36,655,318	\$892,660	\$917.493	6020 481	199	2076 470	2/00/04/	3009,332	\$1,041,425	523,773,670
Total Tax Revenues	اء	\$145,338,008	\$3.361.700	C82 173 E82	357 717 53	2 808 241 2 808 291	004,075		C16,016,16	\$1,605,312	\$36,655,318
"A&-Is" Tax Revenues	j		10000	andle tolor	005,01,000	11,000,00	P4: 504,000,00		291,021 \$5,231,462	56,377,124	\$145,338,008
State Tax Revenues											
State Property Tax Revenues		\$592,365	\$12,451	\$12,825	<b>\$13.209</b>	\$13 606	814 CT.	#14 JAC	3	3	
State Sales and Use Tax Revenues		\$6,222,405	\$130,790	\$134,714	\$138.755	\$142.918	20C 27LS	C37 C613	000,176	\$29,342	\$592,365
State Individual Income Tax		\$866,104	\$18,205	\$18.751	\$19.314	\$10 802	\$30,400	200,014	240,032	912,806	\$6,222,405
Total State "As is" Tax Revenues		\$7,680,874	\$161,446	\$166,290	\$171,278	\$176,417	\$181.709	\$210651	220 EBCS	106/746	\$000,104
LOCAL Tax Revenues							1	40,000	A	K. C.	#/0,000/ve
Local Property Tax Revenues		\$1,442,760	\$30,326	\$31,236	\$32,173	\$33,138	£34 137	832 OF	es 176	3	3
Local Occupational License Tax	1	\$1,094,716	\$23,010	\$23,700	\$24,411	\$25,144	\$25,898	\$30.00g	40,2,0	30E/1/8	00/7 <del>1</del> 4/1¢
Iotal Local "As is" Tax Revenues		\$2,537,476	\$53,336	\$54,936	\$56,584	\$58.282	\$60.030	\$60.00	20,000	089 3013	01/1860/1¢
10th As-18 lax Kevenues	L	\$10,218,350	\$214,782	\$221,226	\$227,862	\$234,698	\$241,739	\$280.242	\$376.633	2506 148	0.50,000
Estimated Incremental Lax Kevenues	9	\$135,119,658	\$3,146,920	\$3,350,356	\$3,488,573	\$3,574,043	\$3,644,245 \$4	4.011.379	011 379 \$4 854 841	\$5,870 O75	\$125 110 550
( Patriana F. State										20,00	0.00/44
(-) Retained by Local	at 20%	\$20,200,363	\$461,519	\$497,560	\$521,135	\$534,627	\$545,169	\$600,128	\$726,290	\$878,271	\$20,200,363
Net Incr. Tax Rev. Available from Project	ı	100 000 700	200,701	1107/10	\$1/0,5/9	\$180,181	\$183,680	\$202,148	\$244,678	\$295,925	\$6,82
ogram	at 80%	\$80 801 453	345,777 355,710,546	\$2,680,285	\$2,790,858	\$2,859,234	\$2,915,396 \$3,209,103 \$3,883,873	13,209,103		\$4,696,780	\$108,093,726
_		\$27.294.273	#1/010/0//	502,005 to	150,500,74	\$4,138,509	\$2,180,676 \$2,400,513 \$2,905,160	52,400,513		\$3,513,082	\$80,801,453
The state of the s		017,267,130	ACT/1/00	CPO,UKOC	5/15 31 K	7700	27.7	8000 R00	2022	193 200	



### Lexington-Fayette Urban County Government DEPARTMENT OF FINANCE

Jim Gray Mayor

William O'Mara Commissioner

May 1, 2014

Centrepointe Parking Company, LLC 250 West Main Street Suite 300 Lexington, KY 40507 Attn: R. Dudley Webb, Chairman

RE: Tax Increment financing Base Year (2008) Local Tax

The purpose of this letter is to certify the following amounts as the 2008 LFUCG local tax baseline for the Centrepointe

The amounts are:

Local Property Tax: Local Witholding:

\$25,784 \$19,564

Please contact me if you have any questions.

Sincerely,

William O'Mara

cc: Kevin Atkins, LFUCG

John Farris, Commonwealth Economics

# EXHIBIT C AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT

#### AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (this "AGREEMENT") is made as of the 15<sup>th</sup> day of September, 2014 (the "Effective Date") by and among the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky ("LFUCG"), and the DEPARTMENT OF FINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the "Agency"), and Centrepointe Parking Company, LLC, a Kentucky limited liability company and its affiliates ("Developer" and, collectively, the "Parties");

#### RECITALS

Whereas, pursuant to the Act, as hereinafter defined, LFUCG by Ordinance No. 265-2008(the Development Area Ordinance"), adopted on December 4, 2008, established Phoenix Park/Courthouse Development Area (the "Development Area") and pledged certain LFUCG Incremental Revenues, through the execution of a local participation agreement as provided in the Act, dated December, 1, 2008 (the "Local Participation Agreement") to pay for project costs and redevelopment assistance within the Development Area as more specifically identified within the Local Participation Agreement, and

Whereas, pursuant to the Act LFUCG by Ordinance No. \_\_\_\_-2014 (the "Amended Development Area Ordinance"), adopted on \_\_\_\_\_\_\_, 2014, to amend certain documents and agreements and other matters related to the Development Area and pledged certain LFUCG Incremental Revenues, through the execution of an amended and restated local participation agreement as provided in the Act, dated September 15, 2014 (the "Amended and Restated Local Participation Agreement" as hereinafter defined) to pay for project costs and redevelopment

assistance within the Development Area as more specifically identified within the Amended and Restated Local Participation Agreement, a copy of which is attached as Exhibit "A"; and

Whereas, in the Amended and Restated Development Area Ordinance, LFUCG, established the Agency as its agency and instrumentality and constituted authority for the purpose of performing functions related to the oversight, administration, and implementation of the Amended and Restated Development Area Ordinance and Amended and Restated Local Participation Agreement on behalf of LFUCG; and

Whereas, after the adoption of the Amended and Restated Development Area Ordinance and the execution of the Amended and Restated Local Participation Agreement, the Agency applied for and received a pledge of certain State Incremental Revenues though the State's Signature Project Program as provided in the Act, to pay for designated Approved Public Infrastructure Costs, Financing Costs for Approved Public Infrastructure Costs, and Signature Project Costs within the Development Area, as set forth and identified in a Tax Incentive Agreement between the Kentucky Economic Development Finance Authority ("KEDFA") and the Agency; and

Whereas, when the Development Area was established the primary private project planned within the Development Area was the CentrePointe Project (the "Project"), which is a mixed-use project consisting of hotel, residential, office and retail uses, together with public infrastructure, including related parking, more specifically described in Exhibit "C" attached hereto; and

Whereas, LFUCG recognizes that the redevelopment of the Development Area and the construction of Project, as contemplated by the terms of this Agreement, will not occur without a

public-private partnership and financial assistance provided to the Project by LFUCG and the Commonwealth of Kentucky (the "State"); and

Whereas, the Parties desire to set forth their mutual agreements, understandings and obligations, in order to facilitate the design, financing, development and construction of the Development Area and the Project.

#### STATEMENT OF AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, and in consideration of the premises and the mutual covenants and undertakings contained in this Agreement, the Parties hereby agree and covenant as follows:

#### **SECTION I**

#### <u>Preambles</u>

The Parties hereto agree that the above "preambles" or "preamble clauses" (the above "Recitals") are incorporated herein by reference as if fully restated herein and form a part of the agreement between the parties hereto.

#### SECTION II

#### **Definitions**

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

A. "Act". Shall mean KRS 65.7041 to KRS 65.7083, KRS 154.30-010-154.30-090, and KRS 139.515.

- B. "Affiliate". A corporation or other entity controlled by, controlling or under common control of the Developer.
- C. <u>"Agency"</u>. Shall mean the Department of Finance of the Lexington-Fayette Urban County Government.
- D. "Agreement". This Amended and Restated Master Development Agreement, including all Exhibits attached hereto.
- E. "Approved Public Infrastructure Costs". Shall be the Capital Investment approved by KEDFA for the Parking Garage, and set forth in the Tax Incentive Agreement.
- F. "Approved Signature Project Costs". Shall have the meaning as provided in the Act.
- G. "Bank Documents". Shall mean those documents constituting the private provision of debt financing to private parties.
  - H. "Capital Investment". Shall have the meaning as provided in the Act.
- I. "<u>Developer</u>". Has the meaning given in the introductory paragraph of this Agreement.
- J. "Development Area". Shall have the meaning given in the Recitals to this Agreement.
- K. "<u>Development Schedule</u>". Shall mean the projected phasing schedule for the Project, attached as Exhibit "D".
- L. "Effective Date". Has the meaning given in the introductory paragraph of this Agreement.

- M. "Financing Costs". Shall be the financing costs as defined in the Act for the Approved Public Infrastructure Costs.
- N. "Incremental Revenues". Shall mean the tax revenues pledged to the Development Area by LFUCG as set forth in the Amended and Restated Local Participation Agreement, and by the State, acting through KEDFA, through the execution of the Tax Incentive Agreement with the Agency.
- O. "<u>LFUCG</u>". The Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky created pursuant to KRS 67A.
- P. "KEDFA". Shall mean the Kentucky Economic Development Finance Authority, which is assigned for administrative purposes to the Kentucky Economic Development Cabinet.
- Q. "Amended and Restated Local Participation Agreement". Shall mean the agreement pledging certain LFUCG Incremental Revenues to pay for certain Project Costs within the Development Area as set forth in the Amended and Restated Local Participation Agreement, dated September 15, 2014, as it may be amended, a copy which is attached as Exhibit "A".
- R. "Parking Garage". Shall mean a 3 story underground parking garage to be constructed as part of the Project on the Project Site.
- S. "Private Project Elements". Shall mean the elements of the Project that shall be privately developed and owned and operated, including the Parking Garage (which is considered public infrastructure), office, retail, residential, hotel, restaurant and other commercial aspects of the Project.

- T. "Private Financing". Shall mean the financing, including bonds or increment bonds for the Parking Garage, needed to provide for the development and construction of the Private Project Elements or any financing received by the Developer that is not from LFUCG or State.
- U. "Project". Shall mean the CentrePointe Project within the Development Area, more specifically described in Section IV and Exhibit C attached hereto.
- V. "Project Costs". Shall mean any capital investment as defined in the Act incurred or expended to undertake the Project.
- W. "Project Site". Shall mean the entire block in downtown Lexington, Kentucky bounded by S. Upper Street, West Vine Street, South Limestone Street and W. Main Street.
  - X. "Signature Project". Shall have the meaning as provided in the Act.
- Y. "Signature Project Cost". Shall mean the Capital Investment approved by KEDFA as signature project costs as provided in the Act, and identified within the Tax Incentive Agreement.
- Z. "State". Shall mean the Commonwealth of Kentucky, including any of its agencies and departments.
- AA. "Tax Incentive Agreement". Shall mean the agreement pledging certain State Incremental Revenues to pay for designated costs within the Development Area as set forth in the Tax Incentive Agreement, dated as of September 24, 2009, as it was amended as the Second and Restated Tax Incentive Agreement, dated the 12th day of December, 2013, as it may be further amended and/or restated, by and between the Agency and KEDFA, which is attached hereto as Exhibit "B".

BB. "<u>Unavoidable Delays</u>". Shall mean delays due to labor disputes, lockouts, acts of God, enemy action, terrorist action, civil commotion, riot, governmental regulations not in effect at the date of execution of this Agreement, conditions that could not have been reasonably foreseen by the claiming party, or unavoidable casualty, provided such matters are beyond the reasonable control of the party claiming such delay.

#### **SECTION III**

#### Representations

- A. <u>LFUCG</u> and the Agency. LFUCG and Agency possess the requisite authority to enter into this Agreement, and neither LFUCG nor the Agency, in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms of this Agreement, has made any untrue statement of a material fact or failed to state a material fact.
- B. Developer Representations. The Developer represents and warrants that: (i) the Developer (a) is a Kentucky limited liability company possessing the requisite authority to enter into this Agreement; (b) is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code; (c) has not, in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms of this Agreement, made any untrue statement of a material fact or failed to state a material fact; and (d) would not enter into this Agreement to undertake and construct the Project but for the commitment of LFUCG and the Agency to provide financial and other incentives to the Project as provided in this Agreement; (ii) the execution of this Agreement and the construction of the Project by the Developer will not knowingly violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to the Developer; and (iii) there are no undisclosed actions, suits or proceedings pending or threatened against the Developer

which would, if adversely determined, have a material effect on the Developer's ability to enter into this Agreement or construct the Project in accordance with this Agreement.

#### **SECTION IV**

#### **Project**

- A. The Project being undertaken by the Developer shall be constructed on the Project Site and shall substantially consist of the following Private Project Elements:
  - 1. 315 keys, between two full-service hotels
  - 2. 16 condominiums
  - 3. 75 apartments with 10,700 square feet of ground floor retail space
  - 4. Office building with 150,094 square feet of Class A office space as well as retail space
  - 5. 2 story retail building with a roof top café/bar
  - 6. 3 story underground Parking Garage with approximately 700 parking spaces (which is considered to be public infrastructure).

Several Affiliates have been established to develop, construct and/or operate the various Private Project Elements, and the Developer shall have the right to assign any rights created by this Agreement to one or more of the Affiliates. The anticipated Affiliates for the Project include the following entities, Fayette Land Company, LLC; Centrepointe Vertical, LLC; The Offices at Centrepointe, LLC; The Apartments at Centrepointe, LLC; The Penthouses at Centrepointe LLC; Centrepointe Hotel Partners I, LLC; and Centrepointe Hotel Partners II, LLC. The Developer and its Affiliates shall remain in good standing with the Office of the Secretary of State for the State for the full-term of this Agreement. In addition, the Developer and its Affiliates shall provide a listing of their officers and managers to the Commissioner of Finance on or before June 30 of each year following the execution of this Agreement, with the current officer and managers of the Developer and its Affiliates being listed on Exhibit E attached hereto.

- B. The Project shall be financed with Private Financing and equity provided by the Developer, and its Affiliates, subject to the pledge of State and LFUCG Incremental Revenues to reimburse the Developer for certain Capital Investments as set forth in Section V of this Agreement. The Developer shall keep LFUCG informed as to the status and details of the Private Financing for the Project, The Parties acknowledge that construction on the Project has commenced, and that prior to construction starting, the Developer confirmed to the Commissioner of Finance that Developer had obtained the Private Financing, along with a confirmation from the primary lender for each of the respective Private Project Elements, to substantially construct the Private Project Elements of the Project, with the exception of the hotel, apartments and condominiums.
- C. The Project shall be constructed in accordance with the Final Design Plans to be approved by the Courthouse Area Design Review Board and LFUCG, and shall be consistent with the Project Plans, attached hereto as Exhibit "C", with the understanding that any amendments to the Project Plans must be approved in accordance with the procedures established by the Courthouse Area Design Review Board.
- D. The Developer shall construct the Project upon the Project Site, consistent with the Final Design Plans as provided in Section IV(C) of this Agreement, and upon the acquisition of all necessary permits and approvals required by LFUCG and the State, and in accordance with this Agreement. The Developer agrees to proceed expeditiously to complete construction plans and specifications to a level adequate to obtain all permits and approvals necessary to complete construction of the Project. In addition, as part of the plan approval, the Developer has engaged an independent geotechnical engineer selected by LFUCG, which provided a report to LFUCG

and the Developer, as to the feasibility of constructing the Project, including construction of the underground Parking Garage, in relation to the depth of the water table.

- E. <u>Construction Schedule.</u> The Developer agrees to use commercially reasonable efforts to construct the Project in accordance with the Development Schedule attached hereto as Exhibit "D". However, should the Developer encounter an Unavoidable Delay or be delayed by the Developer's inability to obtain necessary government or other permits or required approvals, or any other cause which the Developer and LFUCG agree is justifiable, the Development Schedule may be reasonably extended by LFUCG. For all other reasons, the Developer shall obtain the prior written approval of LFUCG for any substantial amendment to the Development Schedule, which approval shall not be unreasonably withheld.
- F. Project Costs. The Developer shall document all Project Costs, Capital Investments, and Financing Costs, including which costs represent Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs for Approved Public Infrastructure Costs (which are the costs eligible to be reimbursed by the Tax Incentive Agreement and/or the Amended and Restated Local Participation Agreement), associated with construction of the Project and submit such costs to LFUCG and the Agency in the format to be determined by the Agency and KEDFA, to enable the Agency and LFUCG to comply with its reporting requirements as set forth in the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement.
- G. <u>Parking Garage.</u> The Developer acknowledges that the ability of the Agency and LFUCG to reimburse Developer from Incremental Revenues, as provided in Section V of this Agreement, for Capital Investments and Financing Costs for the construction of the Parking

Garage, is dependent upon the Parking Garage being considered by the State to be Approved Public Infrastructure within the meaning of the Act. The Developer commits to operate the Parking Garage to provide public parking in order to qualify as Approved Public Infrastructure. This requirement shall be included within any Affiliate agreements relating to the Project, and shall continue so long as Incremental Revenues are being paid to reimburse the Developer for the costs of the Parking Garage as provided in Section V of this Agreement. The Developer agrees to contract with nationally recognized parking garage operator for the operation of the Parking Garage, and any amendments thereto to the Commissioner of Finance. The Developer agrees to provide other information on the Parking Garage operator and the operation of the Parking Garage as may be requested by the Commissioner of Finance.

H. The Developer shall assist the Agency in complying with any reporting requirements mandated by the Amended and Restated Local Participation Agreement and Tax Incentive Agreement and in calculating the Incremental Revenues that may be due to the Agency from LFUCG and the State. The Developer shall include provisions in any Affiliate agreements, construction agreements or leases relating to the construction or operation of the Project, to require the contractors constructing the Project and businesses operating within the Project to provide information, including federal and state tax identification numbers, etc., to the Agency or other information as may be required by the Agency, relating to the LFUCG and State taxes that may be generated from the Project. In addition, in the event that the Agency retains the services of an independent CPA to certify the Capital Investment or provide other reporting required by

State pursuant to provisions of the Tax Incentive Agreement, the cost for such services shall be paid by Developer.

#### **SECTION V**

#### Priority of the Use of Incremental Revenues

Pursuant to the provisions of the Act, the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement, the Development Area and Tax Incentive Agreement has been activated effective January 1, 2013, which will potentially allow for Incremental Revenues to be available to the Agency beginning in calendar year 2014. In consideration of the Developer constructing the Project and complying with the requirements and conditions of Section IV of this Agreement, LFUCG and the Agency agree that priority for the use of the Incremental Revenues received by the Agency from LFUCG and the State shall be as follows:

A. Each year following the Activation of the Development Area until its termination, \$45,000 of the Incremental Revenues received by the Agency pursuant to the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement shall be retained by the Agency and used to cover administrative and other expenses incurred by the LFUCG or the Agency for the administration and implementation of the Development Area Ordinance, including complying with any reporting requirements set forth in the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement, and costs for professional services related to this Agreement and/or finalizing any required amendments to the Agreement or Tax Incentive Agreement. It is understood that if in any year the amount of Incremental Revenues received by the Agency are not sufficient to this satisfy the annual amount of \$45,000,

the amount not satisfied may be recovered by the Agency from the Incremental Revenues received by the Agency in future years.

- B. After the obligation set forth in Section V(A) of this Agreement has been fully satisfied, \$60,000 of the Incremental Revenues received by the Agency pursuant to the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement for a ten (10) year period may be expended by the Agency for incentives that may be necessary, as determined by LFUCG in its sole discretion, to pay for relocation costs or other costs to encourage tenants to locate in the Project. It is understood that if in any year the amount of Incremental Revenues received by the Agency are not sufficient to pay this \$60,000 annual amount, the amount not satisfied may be paid by the Agency from the Incremental Revenues received by the Agency in future years.
- C. After the annual obligations set forth in Section V(A) and (B) of this Agreement have been fully satisfied, and the Developer meeting its obligations set forth in Section IV of this Agreement, Incremental Revenues received by the Agency pursuant to the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement shall be annually paid to the Developer to reimburse the Developer for Capital Investment associated for Approved Public Infrastructure Costs, Financing Costs and Signature Project Costs related to the Parking Garage; up to the actual Capital Investments and Financing Costs for the Parking Garage, as certified by the Developer and approved by KEDFA, but not to exceed \$51,000,000 in total. No Incremental Revenues shall be paid to the Developer pursuant to this paragraph V(C) until the Developer has expended documented Project Costs to satisfy the Minimum Capital Investment of \$150,000,000 as set forth in the Tax Incentive Agreement, as amended. LFUCG agrees to

amend the Amended and Restated Local Participation Agreement to provide that the Capital Investments and Financing Costs be eligible costs for reimbursement from LFUCG Incremental Revenues, and shall direct the Agency to request KEDFA to amend the Tax Incentive Agreement to provide the Capital Investments and Financing Costs for the Approved Public Infrastructure and Signature Project Costs, for the Parking Garage, to be eligible for reimbursement from State Incremental Revenues. It is understood that any funds due to reimburse Developer pursuant to this Section V(C) of this Agreement may be pledged by Developer directly to pay the Private Financing incurred by Developer for the Parking Garage, or paid directly, if so directed by the Developer, to any trustee for bonds that may be issued to pay for or reimburse Approved Public Infrastructure Costs, Signature Project Costs, or Financing Costs for Costs for the Approved Public Infrastructure Costs, as provided in the Financing Plan set forth in the Amended and Restated Local Participation Agreement, with the understanding that any bonds or private financing shall not be subject to a pledge of the full faith and credit of LFUCG or be guaranteed by LFUCG.

- D. After the obligations set forth in Section V(A) and (B) and (C) of this Agreement have been fully satisfied, Incremental Revenues received by the Agency pursuant to the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement may be used by the Agency to pay for other eligible capital costs and set forth in the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement.
- E. It is understood by the Parties that after the Activation of the Tax Incentive Agreement any State Incremental Revenues that may be generated and available to be paid by the State to the Agency pursuant to the provisions of the Tax Incentive Agreement, shall be held

in escrow without interest accruing thereon, until the Minimum Capital Investment of \$150,000,000 in documented Project Costs, required for the release of State Incremental Revenues, are certified as provided in the Tax Incentive Agreement. It is further understood that the payment of State Incremental Revenues to the Agency are limited to reimbursement for the Approved Public Infrastructure Costs, Signature Project Costs, and Financing Costs, and other approved costs identified in the Tax Incentive Agreement, that are certified by the Agency to the State and approved by the State.

- F. Notwithstanding anything to the contrary, nothing in this Agreement shall be interpreted to commit LFUCG and/or the Agency to pay for or reimburse any Project Costs, except for the Incremental Revenues that may be generated within the Development Area and due to the Agency as provided in the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement.
- G. The obligations of the Agency to reimburse costs to the Developer as provided in Section V(C) of this Agreement are contingent upon KEDFA amending Exhibit A of the Tax Incentive Agreement to allow the Capital Investments and the Financing Costs for the Parking Garage to be reimbursed with State Incremental Revenues as Approved Public Infrastructure Costs, Financing Costs, and for the recovery of any Signature Project Costs; and the operation of the Parking Garage by the Developer for public parking as provided in Section IV(G) of this Agreement. In addition, any obligations of LFUCG or the Agency to reimburse Project Costs from Incremental Revenues shall terminate in the event the Tax Incentive Agreement is terminated or not renewed as provided in the Act and the Tax Incentive Agreement.

#### **SECTION VI**

Default 15 If any Party or any Parties (in either case, the "Defaulting Party") materially breaches or defaults on any of its obligations under this Agreement, the other Parties may give notice that remedial action must be taken by the Defaulting Party within sixty (60) days of the notice. The Defaulting Party shall correct such breach or default within sixty (60) days after such notice; provided, however, if (i) the default is one which cannot with due diligence be remedied by the Defaulting Party within sixty (60) days, and (ii) the Defaulting Party proceeds as promptly as reasonably possible after such notice and with all due diligence to remedy such default, the period after such notice within which to remedy such default shall be extended for such period as may be necessary to remedy the same with all due diligence. If such action is not taken, the non-defaulting parties may, in addition to all other remedies available at law or in equity (including but not limited to specific performance and/or recovery of damages, including reasonable attorneys' fees and other costs and expenses), terminate this Agreement, or the portion of it affected by the default, by giving ten (10) days written notice to the defaulting Party or Parties.

In the event this Agreement is terminated, LFUCG and the Agency shall be (i) relieved of any executory obligations under this Agreement, (ii) released from undertaking any additional obligations as provided in this Agreement.

#### **SECTION VII**

#### Miscellaneous Provisions

A. <u>Term; Survival; Termination</u>. The term of this Agreement shall be from the date of this Agreement until the earliest of (i) the final payment of the Incremental Revenues and the use of such Incremental Revenues pursuant to this Agreement, the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement, or (ii) the termination of this

Agreement in accordance with its terms or (iii) the termination of the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement. This Agreement shall not terminate upon the execution of any agreements required or contemplated by this Agreement, or referred to in this Agreement, and the provisions of this Agreement shall not be deemed to be merged into any such agreements, it being the intent of the Parties that this Agreement shall survive the execution and delivery of any such agreements and shall continue throughout the entire development of the Development Area.

- B. Governing Law. The laws of the State shall govern as to the interpretation, validity and effect of this Agreement.
- C. <u>Severability</u>. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed herein.
- D. <u>Force Majeure.</u> LFUCG, Agency or Developer shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any

such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay (provided, however, that a failure to give such notice timely shall not be a default hereunder or impair the non-performing party's immunities hereunder or account of Unavoidable Delay, unless the failure to give such notice timely actually prejudices the other party). Thereafter, the non-performing party shall, from time to time, on written request of the other party, keep the other party fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default.

E. Notices. Any notice to be given under this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earliest of (i) three (3) days following deposit in the U.S. Mail with proper postage prepaid, Certified or Registered, Return Receipt Requested, (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) receipt of notice given by telecopy or personal delivery:

If to LFUCG:

Mayor Jim Gray

Government Center 200 East Main Street

Lexington, Kentucky 40507

With Copies to:

Kevin Atkins, Chief Development Officer

Government Center 200 East Main Street

Lexington, Kentucky 40507

Janet M. Graham Commissioner of Law Government Center 200 East Main Street Lexington, Kentucky 40507

If to the Agency:

William O'Mara

Commissioner of Finance

Government Center 200 East Main Street

Lexington, Kentucky 40507

With a Copy to:

Janet M. Graham
Commissioner of Law
Government Center
200 East Main Street

Lexington, Kentucky 40507

With additional Copy to:

Kevin Atkins

Chief Development Officer

Government Center 200 East Main Street

Lexington, Kentucky 40507

If to Developer:

Ronald C. Tritschler, Chairman

Centrepointe Parking Company, LLC

250 West Main Street

**Suite 3000** 

Lexington, KY 40507

With Copies (which shall not

constitute notice) to:

Job D. (Darby) Turner III

Bingham Greenebaum Doll LLP 300 West Vine Street, Ste. 1100 Lexington, Kentucky 40507

- F. Approvals. Whenever a party to this Agreement is required to consent to, or approve, an action by the other party, or to approve any such action to be taken by another party, unless the context clearly specifies a contrary intention, or a specific time limitation, such approval or consent shall be given within ten (10) business days and shall not be unreasonably withheld, conditioned or delayed by the party from whom such approval or consent is required.
- G. Entirety of Agreement. As used herein, the term "Agreement" shall mean this Amended and Restated Master Development Agreement and the Exhibits attached hereto. This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements, and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party which has not been embodied in this Agreement or the previous agreements that are referenced herein, and no party shall be bound by or be liable for any alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be amended, modified, superseded, or cancelled only by a written instrument signed by all of the Parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving party. Failure of any party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of any such provision by any party.
- H. <u>Successors and Assigns.</u> This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

- I. <u>Headings.</u> The headings in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.
- J. <u>Exhibits.</u> All exhibits to this Agreement shall be deemed to be incorporated herein by reference and made a part hereof, above the signatures of the parties hereto, as if set out in full herein.
- K. <u>No Waiver.</u> No waiver of any condition or covenant of this Agreement to be satisfied or performed by LFUCG, Agency or Developer shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of either party, except a written waiver signed by such party, shall be construed to be a waiver of any condition or covenant to be performed by the other party.
- L. <u>Construction</u>. No provisions of this Agreement shall be construed against a Party by reason of such Party having drafted such provisions.
- M. <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall constitute an original document.
- N. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the Parties of this Agreement.
- O. <u>No Third Party Beneficiary.</u> Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of LFUCG, Agency and the Developer, any

lender providing financing to Developer, and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

P. <u>Diligent Performance</u>. With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of the performance thereof. Notwithstanding the above, time is of the essence with respect to any time limit specified herein.

Q. Assignment of Rights and Delegation of Duties. Neither LFUCG nor the Agency shall assign this Agreement without the prior written consent of the Developer, which shall not be unreasonably withheld. The Developer shall have the right to assign this Agreement, or any part hereof, to an Affiliate, provided the assignee shall assume all assigned liabilities and obligations of the Developer hereunder and LFUCG provides its consent in advance in writing, which consent shall not be unreasonably withheld.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT An urban county government of the Commonwealth of Kentucky
By:
Jim Gray
Its: Mayor
Date:
Department of Finance of the Lexington-Fayette Urban County Government.
By:
William O'Mara
Its: Commissioner of Finance
Date:
Centrepointe Parking Company, LLC
By:
Ronald C. Tritschler
Its: Chairman
Date:

# Exhibit A

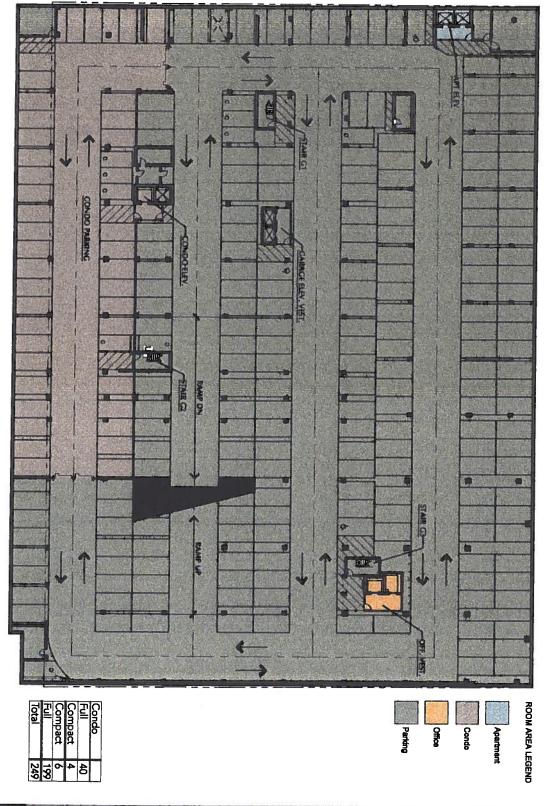
Amended and Restated Local Participation Agreement

# Exhibit B

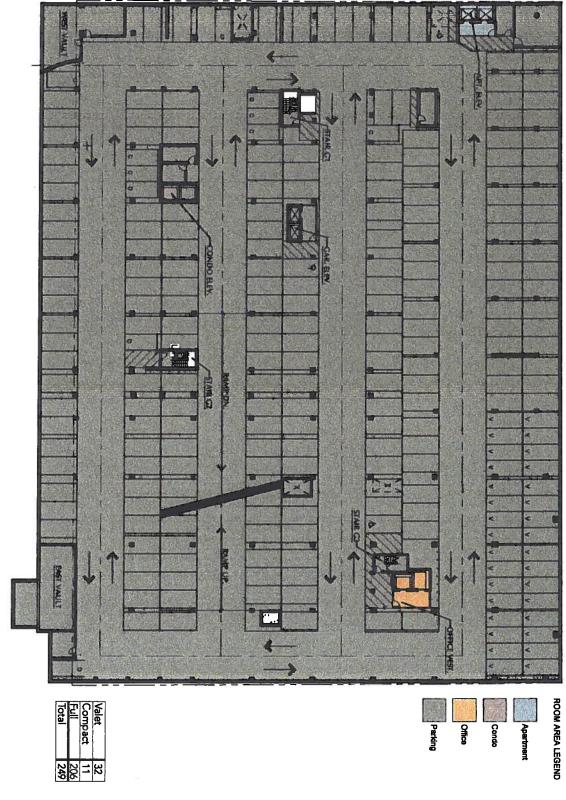
Tax Incentive Agreement

# Exhibit C

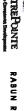
Preliminary Design Plans for CentrePointe

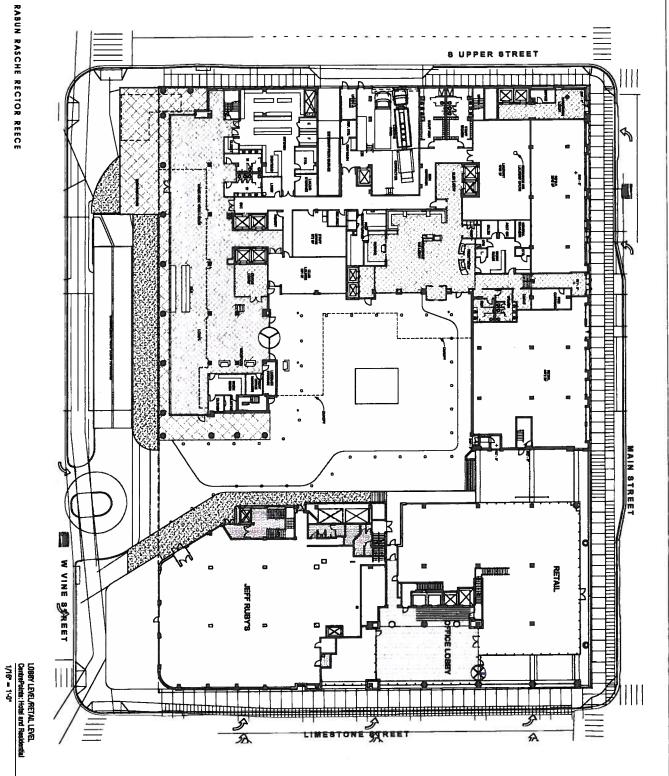


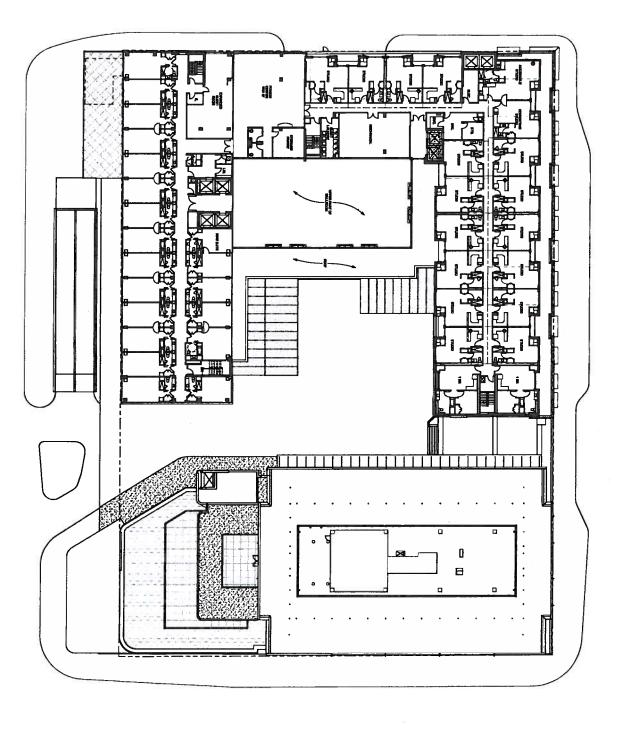
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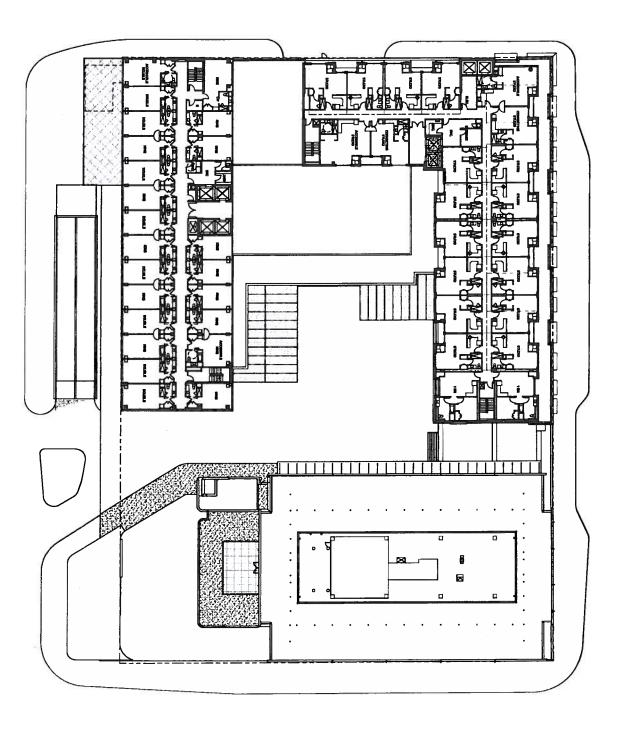


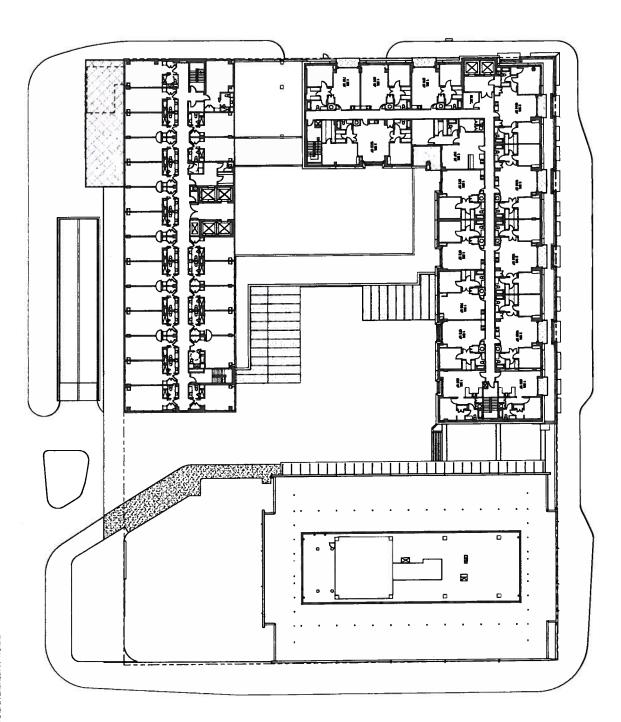
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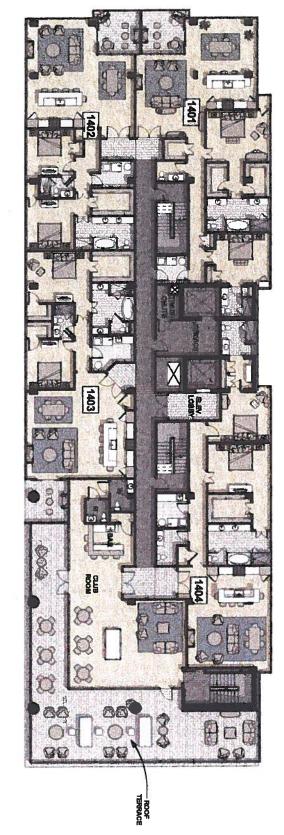












GROSS INTERIOR AREA: 10,667 SF

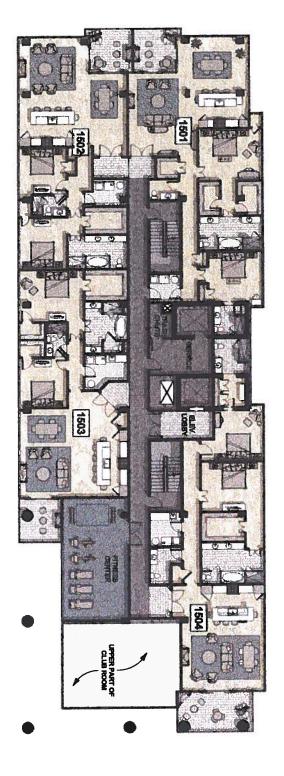
	CLUB ROOM:	ROOF TERRACE: TOTAL:
į	415 USC 1	1,637 SF
1402: INTERIOR: EXTERIOR: TOTAL:	TOTAL	1401: INTERIOR:
1.720 SF 136 SP 1.886 SP	1,229 BF	2093 SF
1404: INTERIOR: EXTERIOR: TOTAL	TOTAL	1403; INTERIOR:
1,981 SF	1,905 SF	1,775 SE

# **CONDO LEVEL 1**

CentrePointe: Hotel and Residential

9/12/14





GROSS INTERIOR AREA: 9,742 SP

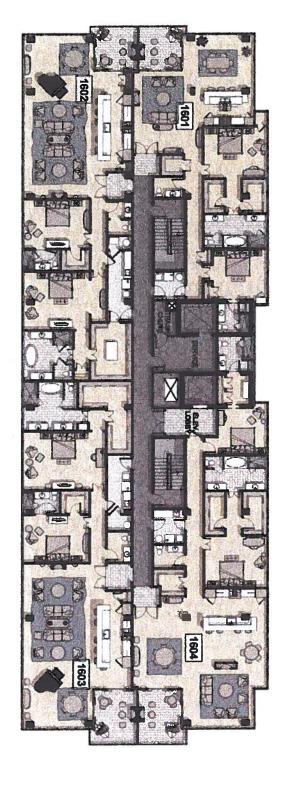
1,720 SF	2,093 SF 
1504; INTERIOR: EXTERIOR:	1503; INTERIOR: EXTERIOR: TOTAL:
2,005 SP 208 SP	1,775 SF 132 SF 1,907 SF

ISO1: INTERIOR: EXTERIOR: TOTAL: 1SO2: INTERIOR: EXTERIOR: TOTAL:

# **CONDO LEVEL 2**

CentrePointe: Hotel and Residential





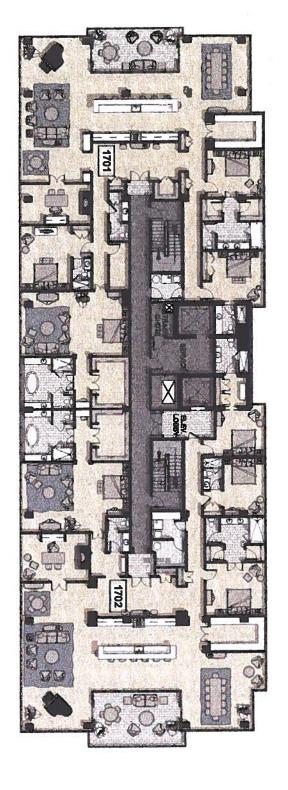
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1602:	1601:
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EXTERIOR:	EXTERIOR:
TOTAL:	TOTAL:
2607 SE 	2094 SF 136 SF 2130 SF
1604;	1603:
INTERIOR:	INTERIOR:
EXTERIOR:	EXTERIOR:
TOTAL	TOTAL
2513 SF	2597 SF
170 SF	170 SF
2683 SF	2767 SF

# **CONDO LEVEL 3**

CentrePointe: Hotel and Residential





GROSS INTERIOR AREA 11336 SF

4930 SF 272 SF S202 SF

1701: INTERIOR: EXTERIOR: TOTAL:

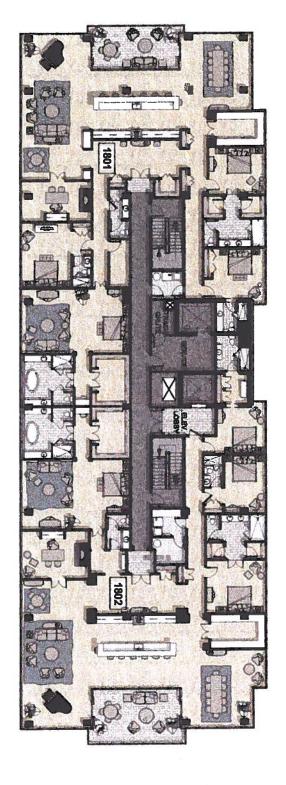
1702: INTERIOR: EXTERIOR: TOTAL:

4958 SF 341 SF ST 998 SF

**CONDO LEVEL 4** 

CentrePointe: Hotel and Residential





GROSS INTERIOR AREA 11336 STF

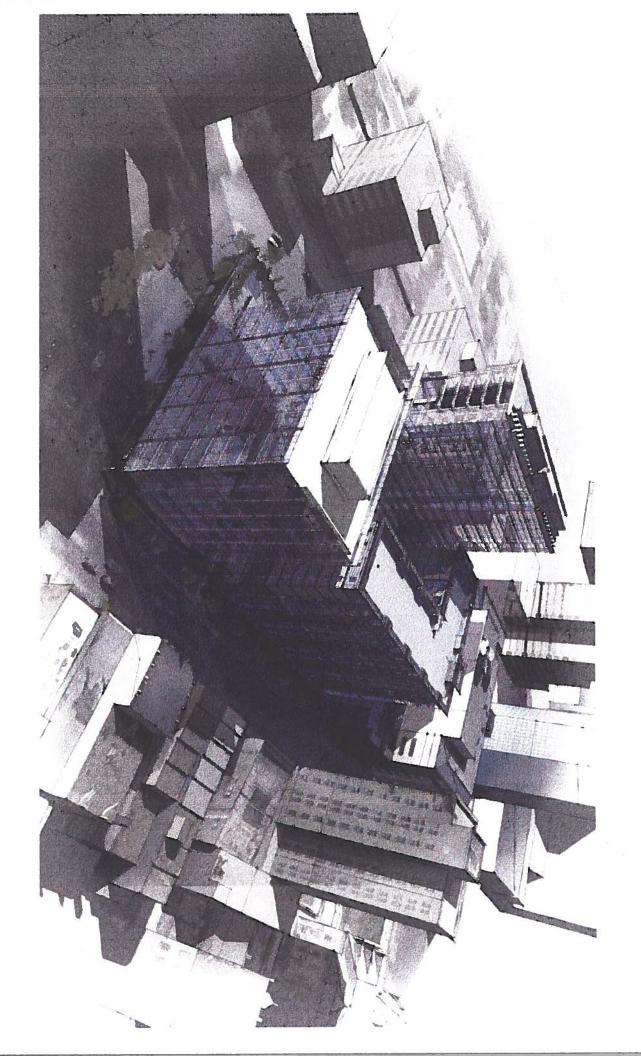
4930 SF 272 SF S302 SF

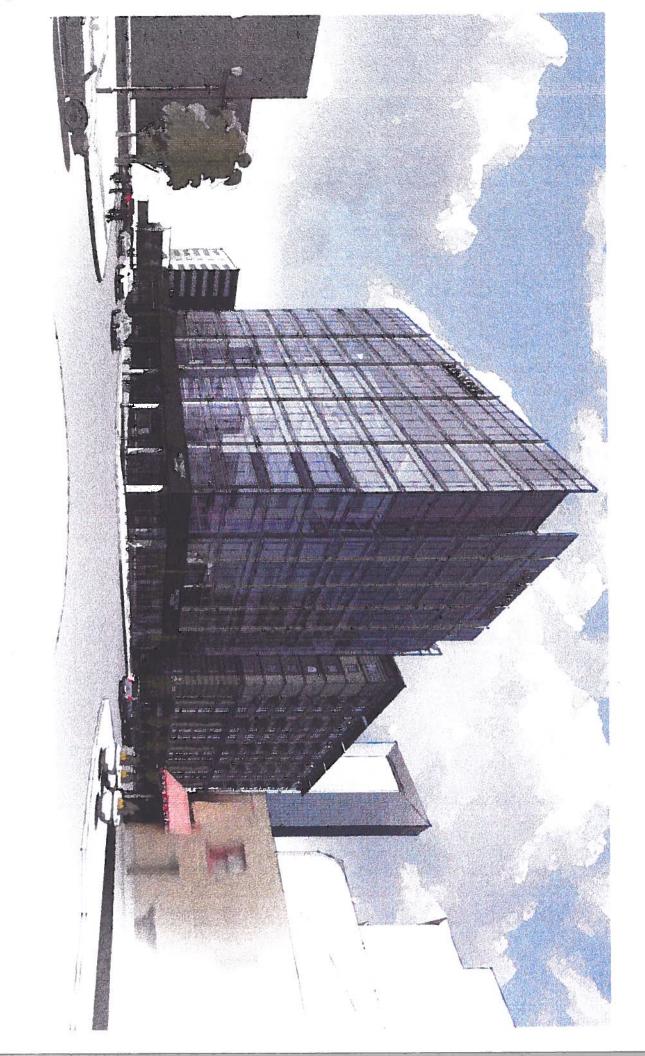
4958 SF 341 SF 5299 SF

1801: INTERIOR: EXTERIOR: TOTAL: 1802: INTERIOR: EXTERIOR: EXTERIOR:

**CONDO LEVEL 5** 

CentrePointe: Hotel and Residential









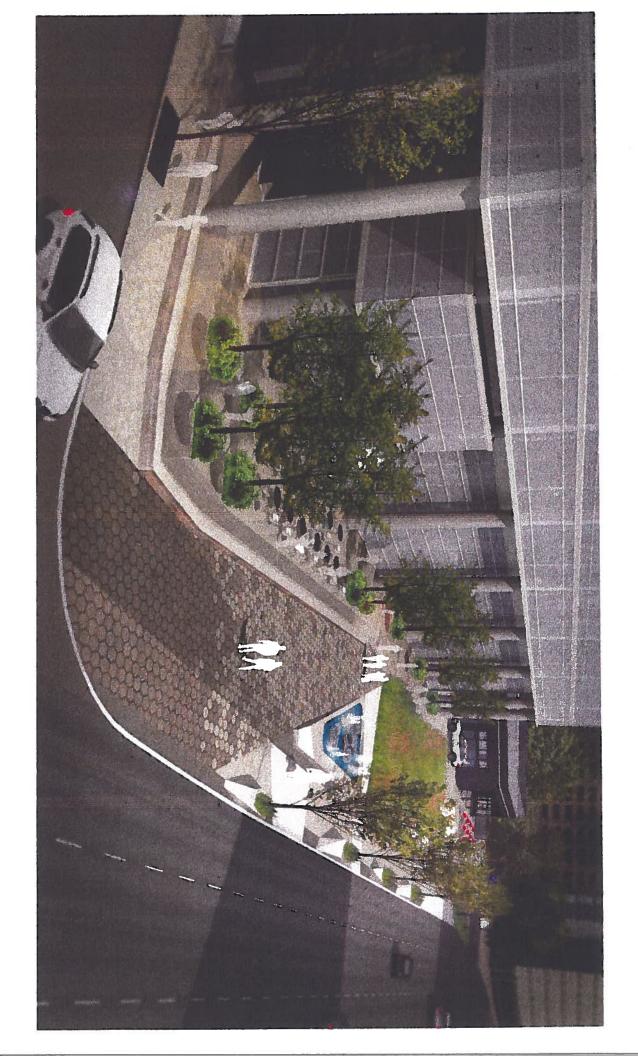
















# Exhibit D

Project Schedule

Project CENTREPO	Project CENTREPOINTE DEVELOPMENT		Layout CENTREPOINTE - WAS REMAINING	Date: 15-Sep-14 Time: 10:25
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CENTREPOINT	CENTREPOINTEDEVELOPRIENT	437 16-Hay-14 A. 26-Apr-16		
MILESTONES	MILESTONES OVERALL TIMING	410 16 Sep-14 26-Apr-16		
1020	CM Notice to Proceed - Parking Garace	0:18-Sep-14*	OM Notice to Proceed - Pariding Garage	
1030	CM Notice to Proceed - Office Building	0 24-0ch-14	+ CM Notice to Proceed - Office Building	
1040	CM Notice to Proceed - Marriott Hotel/Marriott Residenses	0:02-Dep-14	♦ CM Notice to Proceed - Marriott Hotel	el/Marriott Residences
A1160	Start of Office Building / Retail	0:15-Dec-14	+ Start of Office Building / Retail	
A1670	Full Service Hotel / Condos - Start	0 28-Feb-16	Full Service Hotel / Coridos - Start	III Service Hotel / Corfoce - Start
0/01	Start Engoeure - Omce Building	0 78-Mar-16	◆ CM Notice to	e Cit Notice to Proceed - Residence Inn Hotel/Apartments
080	Start Englosure - Marriott Hotel/Marriot Residences	0 23-Apr-16	Brate •	Start Enclosure - Rarriott Hotel/Marriot Residences
A1660	Extended Stay / Apartment - Start	0 13-May-16	ā •	Extended Stay / Apartment - Start
1080	CM Notice to Proceed - Office Tenant Improvements	0 17-Jun-16		
1090	Start Enclosure - Residence Inn Hotel/Apartments	0 10-Jul-15		Start Engiosure - Residence Inn Hotel/Apartments
A1240	Office Building - Ready for Tenant Improvements	13-Aug-16		◆ Office Building - Ready for Tenant Improventants
A1080	Marriott Tower Crans De-mobilized	0 21-Sep-16		Marriott Tower Craine De-mobilized
A1330	Jeff Ruby Tenant Fit-out Complete	91-001-18		o Jerr Auby Jenant Prout Complete
A1080	Office Tenant Improvements Complete	11-Nov-15		A Office Bill Clark   Bailed - Characted
A1640	Office Building / Retail - Substantial Completion	11-404-15		A Bacidenia Inn Towns Crans Darbolling
A1100	Residence Inn Tower Crane De-mobilized	01-WON-TT		Office Building - Tenant Move In
A9780	Office Ruitifine - Period Completion	0 25-Nov-16*		e Office Building - Project Completon
A1600	Full Service Hotel / Condos - Substantial Completion	0 18-Mar-16*		◆ Full Behvice Hotel / X
A1300	Full Service Hotel / Condos - Project Completion	0 06-Apr-16		♦ Full Service Hote
A1860	Extended 8tay / Apartments - Substantial Completion	0 08-Apr-16*		◆ Expanded Stay 7
A1370	Extended Stay / Apartment - Project Completion	0 28-Apr-16		
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DESIGN		68 15 Sep 14 22 Dec 14		
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0000	Inches Marriott Hotel Marriott Besidences GMP Documents to CM	22-Dec-14*	M ennes e	siderjoes GMP Documents to CM
14000	issue Residence inn Hotal/Apartments GMP Documents to CM	0 22-Dec-14	tesue Residence Inn Hothl/Apa	tments GMP Documents to CM
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C1700	Bidding Period	20 31-Dec-14 2	28~Jam-15		Bidding Period		
C1710	CM Review Bids & Prepare GMP	9 29-Jan-15 1	10-Feb-15		CM Review Bids & Prepare GMP	repare GMP	
C1720	GMP Executed by CM & Owner		11-Feb-15		◆ GMP Executed by CM & Owner	M & Owner	
C1730	Issue Subcontracts	-	26-Feb-16		Istual Subcontrac		
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H1040	Apply for Office Building Permit	0	30-Oct-14	4 Apply for	Apply for Office Bullding Permit		
A1180	Obtain Office Building Permit & Issue 100% CD's	20 31-004-14	01-Dec-14	1	Obtain Office Building Permit & Issue 100% CD's	sue 100% CD's	••••
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A1570	Obtain Permit Marriott Hotel/Marriott Residences & Issue 100% CD's	20 13-Jan-16 (	09-Feb-16		Obtain Permit Marri	Obtain Permit Marriott Hotel/Marriott Residences & Issue 100% CD's	00% CD.s
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A1140	Parting Garage - Foundations	20 D4-Aug-14 A 28-Sep-14	28-Sep-14	Parking Garage -	- Foundations		
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Remaining Work	Work	į					
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A1150 Parking Garage - Structure (Area A - Office) A1200 Columns & Walls (Area A) A1200 Blab on Grade - B3 (Area A) A1300 Elevated Dook - B3 (Area A) A1300 Elevated Dook - B3 (Area A)	OD Start	Phish	Many Party Ban Ban May Ann Many has been been been been been been been bee	
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-	10 31-Dot-14	13-Nov-14	Slab on Grade - B3 (Area A)	
-	10 12-Nov-14	25-Nov-14	Elevand Dept - R2 (Area A)	
	10 20-Nov-14	05-Dec-14	Estated Deck : B1 (Area A)	
A1280 Elevated Deak - Lobby Level (Area A)	10 02-Dec-14	15-Deo-14	Elevated Deck - Lobby Level (Area A)	
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A5460 Columns & Wells (Area B)	30 20-Nov-14	06-Jan-15	Columns & Weds (Area B)	
A5470 Slab on Grade - B3 (Area B)	16 16-Dec-14	06~Jan-16	Slab on Grade B3 (Area B)	
A6600 Elevated Deck - B2 (Area B)	12:07-Jan-16	22~Jan-16	Elevated Deptk - B2 (Area B)	
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A6630 Elevated Deck - Lobby Level (Area C)	16 01-Apr-16	21-Apr-16	Elevated Deck - Lobby Level (Area C)	
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A1170B Office Building / Retail - Pour Level 2		16-Jan-15	Office Building / Redail - Pour Level 2:	
A1170C Office Building / Retail - Pour Level 3	11 14-Jan-16	28~Jan-15	Office Building / Reball - Pour Level 3	
A1170D Office Building / Retail - Pour Level 4	11 27~lan-16	10-Feb-16	Office Building / Retail - Pour Level 4	
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A1210C	Office Building / Retail - MEP Rough ins & Interiors - Level 3	36 18-Mar-16	06-May-16	Office Building / Refail - MEP Rough-ins. & Interiors - Level 3
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A1210G	Office Building / Retail - MEP Rough-ins & Interiors - Level 7	36 11-Hav-16	28 Jan -16	Office Building / Retail - MEP Rough ins & Interfors - Level 7
A1210H	Office Building / Retail - MEP Rough-ins & Interiors - Level 8	35 22-May-15	13-Jul-16	Office Building / Refall - MEP Rough-ins & Interiors - Level 8
A1210	Office Building / Retail - MEP Rough-ins & Interiors - Level 9	35 06-Jun-16	24-Jul-16	Office Building / Retall - HEP Rough ins & Intervers - Level 9
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A1220B	Office Building / Retail - Interior Finishes - Level 2	30 30-km-16	11-Aug-16	Office Building / Retail - Interior Finishes - Lavel 2
A1220C	Office Building / Retail - Interior Finishes - Level 3	30 14-Jul-16	24-Aug-15	Office Building / Retail - Interfor Finishes - Level 3
A1220D	Office Building / Retail - Interior Finishes - Level 4	30 24-Jul-15	03-8ap-16	Common Office Building (Retail - Interior Finishes - Leviel 4
A1220E	Office Building / Retail - Interior Finishes - Level 6	30 05-Aug-15	16-Sep-15	Comment Office Building / Reball - Interior Finishes - Level &
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A1220G	Office Building / Retail - Interior Finishes - Level 7	30 27-Aug-16	88-Dah-18	Office Buillding! Retail - Interior Finishes - Level 7
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A1170J10 Full Service Hotel / Condos - Pour Level 10	9 06-May-15	16-May-16	ET Full Service Hotel / Condos - Pour Leval 10
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A1170J30 Full Service Hotel / Condos - Pour Level 12	9 21-Hay-16	03~Jun-16	Full Service Hothl / Condos - Pour Level 1/2
A1170J40 Full Service Hotel / Condos - Pour Level 13	9 01-Jun-16	11-km-16	Tull Service Hotel / Condos - Pour Level 13
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Critical Remarking Work			An AECOM Company

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A1180KE	Full Service Hotel / Condos - Enclosure - Level 17	13 28-Aug-16 14-	14-Sep-15					Full Service Hotel / Condos - Enclosuris - Level 17	to - Level 17
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A1210A1	A1210A10 Full Service Hotel / Condos - MEP Rough-Ins & Interiors - Level 1	36 06-Jul-15 21-	21-Aug-15	65 - 8 65 656				Full Service Hotel / Condos - MEP Rough-las & Interiors - L.	as & Interiors - Levi
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A1210J1	A1210/10 Full Service Hotel / Condos - MEP Rough-ins & Interiors - Level 10	36 16-8ep-15 02-	02-Nov-16					Full Service Hotel / Condos - MEP Rough-Ins &	· MEP Rough-ins &
A1210JZ	A1210.20 Full Service Hotel / Condos - MEP Rough-ins & Interiors - Level 11	36 22-8ep-16 09-	09-Nov-16					Full Service Hotel / Condos - MEP Rough-ins	s - MEP Rough-ins.
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A1210JB	A1210J80 Full Service Hotel / Condos - MEP Rough-ins & Interiors - Level 16	35 20-Oot-16 09-	09-Dec-16					Full Service Hotel / Condos	Condos - MEP Rougi
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Hunt Construction Group
CENTREPOINTE DEVELOPMENT
REMAINING WORK

HUNT An AECOM Company

Page 9 of 9

Actual Level of Effort + Missione
Actual Level of Effort - Summary
Actual Work
Remaining Work

# Exhibit E

# Officers and Members of Developer and its Affiliates

15440703\_3.docx

### **EXHIBIT E**

## Officers and Managers of Developer and its Affiliates

- 1. Fayette Land Company, LLC
  - a. Co-Manager: Ronald C. Tritschler
  - b. Co-Manager: Joe L. Rosenberg
- 2. Centrepointe Vertical, LLC
  - a. Manager: Ronald C. Tritschler
- 3. Centrepointe Parking Company, LLC
  - a. Manager: Ronald C. Tritschler
- 4. The Offices at Centrepointe, LLC
  - a. Manager: Ronald C. Tritschler
- 5. Centrepointe Hotel Partners I, LLC
  - a. Manager: Ronald C. Tritschler
- 6. Centrepointe Hotel Partners II, LLC
  - a. Manager: Ronald C. Tritschler
- 7. The Apartments at Centrepointe, LLC
  - a. Manager: Ronald C. Tritschler
- 8. The Penthouses at Centrepointe, LLC
  - a. Manager: Ronald C. Tritschler

## **CERTIFICATION**

The undersigned, Meredith Nelson, Claure Urban County Government, hereby certifies as	erk of Council of the Lexington-Fayette follows:						
1. The foregoing Ordinance No and read to the Council of the Lexington-Fayer or special meetings thereof held on theth do of, 2014, at which quorums enacted by the LFUCG Council upon the affi quorum thereof, at the meeting thereof on the _ the vote of each member of the LFUCG Council meeting; and	ay of, 2014, and the day were present; and said Ordinance was rmative vote of at least a majority of a, 2014, with						
2. After passage and adoption of the foregoing Ordinance by the LFUCG Council, it was submitted to the Mayor of the LFUCG who affixed his signature thereto within ten (10) days after the submission thereof to him; and							
3. The foregoing Ordinance was published on theday of 2014, in the a newspaper qualified pursuant to the provisions of Chapter 424 of the Kentucky Revised Statutes, as amended, to publish summaries of ordinances of the Lexington-Fayette Urban County Government.							
	Meredith Nelson, Clerk of Council						
CERTIFICATE							
I do hereby certify that the title to this enactment contains an accurate synopsis of the contents thereof and may be used to satisfy the reading and publication requirements of law.							
	Taft Stettinius & Hollister LLP						
<b>!</b>	By: James E. Parsons Attorney At Law						